
EXHIBIT 19.4A
GLOSSARY

Definitions

The following definitions are relevant to the discussion of the §367(b) regulations:

1. DEFINITION OF TERMS RELATING TO CONDITIONS IMPOSED BY THE REGULATIONS

A. IRC §1246 AMOUNT

The "IRC §1246 amount" is the earnings and profits of a foreign investment company attributable to its stock if the stock had been sold in a transaction to which IRC §1246 applied. [Note 1](#)

Note: This definition is relevant only when dealing with a foreign investment company as defined in IRC §1246(b). In addition, under IRC §1246(a)(2)(B), certain items are excluded from the computation of earnings and profits for IRC §1246 purposes.

B. IRC §1248 AMOUNT

The "IRC §1248 amount" is the earnings and profits (or deficit in earnings and profits) attributable under IRC §1248 to stock in a first-tier foreign corporation if the stock had been sold in a transaction to which IRC §1248(a) applied. [Note 2](#)

Note: This definition applies only when the exchange involves a first-tier foreign subsidiary to which the regulations apply. [Note 3](#) In addition, in certain instances when the regulations require the inclusion of the §1248 amount, the amount included in income is reduced by items excluded from earnings and profits under 1248(d). [Note 4](#)

C. IRC §1248(c)(2) AMOUNT

The "IRC §1248(c)(2) amount" is the earnings and profits (or deficit in earnings and profits) attributable to the stock of a second or lower tier CFC whose stock is exchanged by a first tier CFC. The IRC §1248(c)(2) amount is determined as if the stock of the first tier had been sold in a transaction to which §1248 applied. [Note 5](#)

Note: This definition applies only when the exchanged foreign corporation is a second-tier or lower foreign corporation.

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D. ALL EARNINGS AND PROFITS AMOUNT

For purposes of certain asset repatriations,^{[Note 6](#)} the "all earnings and profits amount" is the net positive earnings and profits, if any, for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of IRC §1246 or §1248 (whichever is applicable). For all other purposes of IRC §367(b), the "all earnings and profits amount" is the earnings and profits or deficit in earnings and profits for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of IRC §1246 or §1248 (whichever is applicable). The determination will be made by applying IRC §1246 or §1248 as if there were no distinction between earnings and profits accumulated before or after December 31, 1962.^{[Note 7](#)} (Note: §1246 and §1248 only apply to earnings accumulated after December 31, 1962.)

E. ADDITIONAL EARNINGS AND PROFITS AMOUNT

The "additional earnings and profits amount" is the earnings and profits or deficit for taxable years beginning before January 1, 1963, which are attributable under the principles of IRC §1248 to the stock of the foreign corporation exchanged. The determination shall be made by applying IRC §1248 as modified by §§7.367(b)-2 through 7.367(b)-12 as if there were no distinction in these sections between earnings and profits accumulated before or after December 31, 1962.^{[Note 8](#)}

F. ALL EARNINGS AND PROFITS AMOUNT OR ADDITIONAL EARNINGS AND PROFITS AMOUNT

In computing an "all earnings and profits amount" or "additional earnings and profits amount" under the principles of IRC §1248, if the stock exchanged is stock in a first-tier corporation, IRC §1248(c)(2) does not apply. If the stock in a lower-tier corporation is exchanged, IRC §1248(c)(2) shall be applied to determine the earnings and profits of that lower-tier corporation attributable to the stock exchanged. IRC §1248(c)(2) will not apply to any other lower-tier corporation.^{[Note 9](#)}

Note: All of the amounts described above include only earnings and profits accumulated while the exchanging shareholder held stock of the foreign corporation which are attributable to such stock interest under the principles of IRC §1248. Thus, amounts computed under direct cross-reference to IRC §1248 include only earnings and profits accumulated while the foreign corporation was a CFC.^{[Note 10](#)} With exception, the amounts computed by reference to IRC §1246 include earnings and profits accumulated both while the foreign corporation was and was not a foreign investment company at any time while the stock was held by the exchanging shareholder. Finally, any amount computed

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under the principles of IRC §1248 includes earnings (or deficits) accumulated while the relevant stock was held by the U.S. person irrespective of whether it was a CFC.

2. DEFINITION OF TERMS USED BY THE REGULATIONS TO DESCRIBE CORPORATIONS INVOLVED IN IRC §367(b) TRANSFERS OF PROPERTY

The following definitions are relevant to describe corporations involved in a property transfer described in IRC §367(b).

A. UNITED STATES SHAREHOLDER

The term "United States Shareholder" means any U.S. person owning 10 percent or more of the voting power of all classes of stock entitled to vote with respect to a foreign corporation within the five year period ending on the date of the sale or exchange. Ownership is defined with reference to the rules under IRC §958. [Note 11](#)

B. DISTRIBUTING CORPORATION

A "distributing corporation" is a domestic or foreign corporation distributing stock in an IRC §355 exchange.

C. CONTROLLED CORPORATION

A "controlled corporation" is a domestic or foreign corporation whose stock is distributed in an IRC §355 exchange.

D. DISTRIBUTING GROUP

A "distributing group" is the distributing corporation and any corporations controlled by it immediately after an IRC §355 exchange.

E. CONTROLLED GROUP

A "controlled group" is the controlled corporation and any corporation controlled by it immediately after an IRC §355 exchange.

F. CONTROLLED FOREIGN CORPORATION

A controlled foreign corporation is a foreign corporation of which more than 50 percent of the outstanding voting stock is owned by a U.S. shareholder.

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